IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 241 of 2007
In
COMPANY PETITION No. 93 of 2007
In
COMPANY APPLICATION No. 126 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MOHIT S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**Yes**
2	To be referred to the Reporter or not ?	**Yes**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**No**
5	Whether it is to be circulated to the civil judge ?	**No**

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SATYESH JAMES PARASAD & 16 - Appellant(s)
Versus
INDIAN PETROCHEMICAL CORPORATION LIMITED - Opponent(s)

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Appearance :
MR SHALIN N MEHTA for Appellant(s) : 1 - 17.
MR KS NANAVATI, Sr, Advocate with MR SN SOPARKAR, Sr. Advocate with MR NANDISH CHUDGAR for NANAVATI ASSOCIATES for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MOHIT S.SHAH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 28/12/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE MOHIT S.SHAH)

This Original Jurisdiction appeal is directed against the judgment and order dated 16.8.2007 in Company Petition No.93 of 2007 by which the learned Company Judge sanctioned the scheme of amalgamation of the petitioner-Company- Indian Petrochemicals Corporation Ltd. (hereinafter referred to as “IPCL” or “the transferor Company) having its registered office at Baroda with Reliance Industries Ltd. (hereinafter referred to as “RIL” or “Reliance” or “the transferee Company”) having its registered office at Mumbai.

2. Reliance Industries Ltd. had filed Company Application No.283 of 2007 before the Bombay High Court. Pursuant to the order dated 16.3.2007 in the said application, RIL held separate meetings of equity shareholders, secured creditors (including debenture holders) and unsecured creditors of RIL on 21.4.2007. The Chairman of the said meeting submitted his report before the Bombay High Court and the RIL filed Company petition No. 345 of 2007 before the Bombay High Court for sanctioning the same scheme of amalgamation of the IPCL with RIL. The said company petition was allowed and the scheme was sanctioned by the Bombay High Court by its order dated 12.6.2007 as modified by order dated 11.7.2007.

3. We may indicate the broad facts leading to filing of this appeal.

3.1 By Resolution of the Board of Directors of IPCL and by Resolution of the Board of Directors of Reliance Industries Ltd., the two companies decided for amalgamation of IPCL (transferor Company) with RIL (transferee Company) and for that purpose to follow the procedure prescribed by and under the provisions of Sections 391 to 394 of the Companies Act, 1956 (hereinafter

referred to as “the Act”). By order dated 16.3.2007 in Company Application No.126 of 2007, this Court directed IPCL to convene separate meetings of equity shareholders, secured creditors (including debenture holders) and unsecured creditors of the IPCL under the Chairmanship of Hon'ble Mr Justice SD Dave, a retired Judge of this Court.

3.2 Accordingly, three separate meetings were held at Baroda on 14.4.2007 under the Chairmanship of Hon'ble Mr Justice SD Dave. The Chairman submitted his report dated 18.4.2007 placing on record the result of the meetings as under:-

(A) The scheme came to be approved by overwhelming majority of the equity shareholders present and voting as per the following details :-

“(i) 7,632 Equity Shareholders holding in the aggregate, 20,37,73,286 equity shares constituting 97.04% in number and representing 99.89% in value of the Equity Shareholders, present in person or by proxy and voting at the Meeting, voted in favour of the Scheme.

(ii) 233 Equity Shareholders holding in the aggregate, 2,28,705 equity shares constituting 2.96% in number and representing 0.11% in value of the Equity Shareholders present in person or by proxy and voting at the Meeting, voted against the Scheme.

(iii) Votes of 54 Equity Shareholders holding 11,74,879 Equity Shares, were declared invalid.”

(B) The secured creditors (including debenture holders) unanimously approved the scheme as per the following particulars:-

(i) 51 Secured Creditors (including Debenture holders) having claims against the Applicant Company of an aggregate value of Rs.355.34 crore and constituting 100% in number representing 100% in value of the Secured Creditors (including Debenture Holders), present in person or by proxy and voting at the Meeting, voted in favour of the Scheme.

(ii) No Secured Creditor (including Debenture holder) of the Applicant Company voted against the Scheme.

(iii) The votes of 3 Secured Creditors having claims against the Applicant Company of an aggregate value of Rs.0.25 crore were declared invalid."

(C) Similarly the unsecured creditors present and voting also unanimously approved the scheme as per the following details:-

"(i) 635 Unsecured Creditors having claims against the Applicant Company of an aggregate value of Rs.687.48 crore and constituting 100% in number representing 100% in value of the Unsecured Creditors present in person or by proxy and voting at the Meeting, voted in favour of the Scheme.

(ii) No Unsecured Creditor of the Applicant Company voted against the Scheme.

(iii) The votes of 4 Unsecured Creditors having NIL claims against the Applicant company were declared invalid."

(emphasis supplied)

3.3 In light of the above report, IPCL filed Company Petition No.93 of 2007, giving rise to the present appeal, seeking sanction of the Company Court to the scheme of amalgamation of IPCL (transferor Company) with RIL (transferee Company). The petition was also supported by affidavit dated 18.4.2007 of the Company Secretary, IPCL stating that the petitioner-Company (IPCL) had complied with the directions given by the Company Court in Company Application No.126 of 2007 and that the scheme was approved by requisite majority of shareholders and creditors of the Company.

3.4 When the petition came up for preliminary hearing on 23.4.2007, the learned Company Judge admitted the petition, fixed it for final hearing on 19.6.2007 and directed publication of the advertisement in two daily newspapers viz. Times of India, Ahmedabad edition and Gujarat Samachar, Ahmedabad and Baroda editions. Notices were also issued to the Regional Director and the Official Liquidator. The Official Liquidator was directed to obtain services of a Chartered Accountant and to submit the report on the affairs of the Company. The Official Liquidator attached to this Court also submitted his report dated 18th June 2007 along with the Chartered Accountant's Investigation Report dated 4.6.2007 indicating that by sanctioning the scheme the interest of the members and the public at large would not be prejudiced. The Regional Director submitted his report indicating that the Government of India had no objection to approval of the scheme and also stating that scheme was not against the public policy. The Bombay Stock Exchange Ltd. and the National Stock Exchange of India Ltd. where the shares of the transferor and transferee Company were listed, granted their no objection to the scheme under the provisions of Section 24(f) of the listing agreements.

3.5 It appears that the Company petition was extensively heard by the learned Company Judge. The objections lodged by 21 equity shareholders as well as the objections lodged by three union of employees were considered by the learned Company Judge who ultimately allowed the Company petition by judgment dated 16.8.2007, which is impugned in this appeal filed on 24.10.2007.

4. In the meantime, after the above judgment, IPCL filed caveat on 22.8.2007 in the OJ Appeals likely to be filed against the judgment. It is the case of the respondent-IPCL (now Reliance Industries Ltd.) that the IPCL received the certified copy of the judgment on 5.9.2007 and that the said certified copy was filed with the Registrar of Companies, Gujarat State, Ahmedabad in prescribed Form 21 on 5.9.2007 itself; similarly, the order of the Bombay High Court was also filed by the RIL with the Registrar of Companies, Maharashtra State, Mumbai on 5.9.2007 and that thus the scheme became effective on 5.9.2007, the appointed date being 1.4.2006. It is also the case of the respondent-IPCL (now RIL) that the scheme has been implemented by the Company by taking various steps in compliance of the same; including fixing record date for issue of shares (12.10.2007), listing approval from the stock exchange (16.10.2007) and despatch of physical share certificates to members who had still not dematerialized their shares (17.10.2007) and declaration of quarterly financial results of RIL post-merger with IPCL, to all stock exchanges and dissemination of information to all shareholders (18.10.2007).

5. This appeal has been filed by 17 minority shareholders who held 19,970 shares which constituted 0.007 % of share holding in the transferor Company- IPCL.

6. Mr Shalin Mehta, learned counsel for the appellants has raised the following broad contentions :-

I The debenture holders of IPCL (transferor Company) form a class distinct and separate from the secured creditors of IPCL but instead of convening separate meetings of the debenture holders, they were clubbed with the secured creditors and, therefore, the scheme of amalgamation is required to be rejected with a direction to hold a separate meeting of the debenture holders of IPCL.

II The share exchange ratio of 1 : 5 (one share of Reliance Industries Ltd. in exchange of five shares of IPCL) is unfair, unjust and prejudicial to the whole class of equity shareholders of IPCL.

III Serious irregularities were committed by IPCL in obtaining proxies from certain minority equity shareholders of IPCL. They were threatned or cerced into signing blank proxy forms by the Heads of Departmens of IPCL before the day of the equity shareholders' meeting. This was violative of the provisions of Section 166 of the Companies Act, violative of the Articles of Association of IPCL and also violative of the Company Court's order dated 23.4.2007 in Company Application No.126 of 2007.

IV Sanction to the scheme results in creation of monopoly status with RIL and concentration of economic power in the hands of a few individuals, which is opposed to the Directive Principles of State Policy as contained in Article 39(b) and (c) of the Constitution. The provisions of Sections 391 to 397 of the Companies Act are required to be read and interpreted in conjunction with Article 39 of the Constitution.

V The scheme is also contrary to the public interest and public policy. The real and apparent purpose of the scheme is that RIL wants to strip IPCL (which was considered to be Navratna) of its assets for diverting funds to the Special Economic Zones and to

wipe out the reserves of IPCL worth more than Rs.4500 crores in one stroke. RIL wants to undertake a systematic liquidation of IPCL assets to fund its ventures.

VI This is a fit case for applying the doctrine of lifting the veil or piercing in the corporate veil.

7. On the other hand, Mr KS Nanavati and Mr SN Soparkar, learned counsel for the respondent-Company have raised the following preliminary objection :-

The order of the Company Court sanctioning the scheme of amalgamation passed on 16.8.2007 had already been implemented before the present appeals were filed because the certified copy of the order was filed in the prescribed form with the Registrar of Companies, Gujarat State Ahmedabad on 5.9.2007. Similarly, the order of the Bombay High Court sanctioning the scheme of amalgamation in the petition filed by the transferee company- RIL was also filed with the Registrar of Companies, Maharashtra at Mumbai on 5.9.2007. Thus the scheme became effective on 5.9.2007; the appointed date being 1.4.2006. The orders were filed with the Registrar of Companies in the prescribed forms through electronic filing on 5.9.2007. Intimations were given to the stock exchanges and the RIL shares were issued to the IPCL shareholders in electronic form and to those who had not dematerialized their shares, physical share certificates were despatched on 17.10.2007. Trading approval was also given by the stock exchange on 22.10.2007 and quarterly financial results of RIL post-merger with IPCL were was also declared to all stock exchanges and disseminated to all shareholders on 18.10.2007. In this view of the matter, the appeal filed on 24.10.2007 against IPCL was not competent and otherwise also infructuous.

8. Apropos the above preliminary objection raised on behalf of the respondent, Mr Shalin Mehta, learned counsel for the appellants has submitted that the appellants requested the learned Company Judge for stay of order sanctioning the scheme of amalgamation in order to enable the appellants to prefer this appeal and to obtain the appropriate interim orders. However, the learned Company Judge did not grant any such stay. In view of the voluminous record and judgment of the learned Company Judge running into 495 pages, the appellants took some time to prefer the appeal which was filed within the period of limitation after deducting the time requisite for obtaining the certified copy. It is, therefore, submitted that these facts cannot be held out against the appellants and for this reason alone, the appeal cannot be treated as not maintainable or infructuous.

9. Having heard the learned counsel for the parties, we do find that in view of the voluminous record of the company petition and also the bulk of the judgment running into 495 typed pages, the appellants needed some time to prepare the appeal memo and the paper-books. In the meantime, the learned Company Judge had declined to stay operation of the order sanctioning the scheme of amalgamation and, therefore, the transferor company as well as the transferee company took the necessary steps towards implementation of the scheme of amalgamation resulting into the transferor company having already been amalgamated into the transferee company before the appeal came to be filed on 24.10.2007. In these peculiar facts and circumstances of the case, therefore, we are not inclined to dismiss the appeals at the threshold.

The question as to what would happen in case the judgment of the learned Company Judge were to be disturbed

would arise if we find any substance in the merits of the contentions raised by the appellants. We now proceed to deal with those contentions.

Was Separate Meeting of Debenture Holders required ?

10. Mr Shalin Mehta for the appellants has submitted that a separate meeting of the debenture holders of IPCL was required to be convened for the following reasons :-

(a) Commercial law and common law recognize three broad categories/classes of creditors viz., preferential creditors, secured creditors and unsecured creditors (Palmer's Company Law, 21st Edition at page 700, and in Re Manekchowk and Ahmedabad Manufacturing Company Ltd. (1970) 40 Company Cases 819 (877) (Guj). The debenture holders of IPCL belong to the category/class of preferential creditors and in the event of liquidation of the company, the debenture holders would get paid off first in preference to the secured and unsecured creditors of IPCL.

(b) The Companies Act, 1956 has special provisions for protecting the interest of the debenture holders. Sections 117A to 117C indicating the intention of the Legislature to provide special protection to the class of debenture holders, which provisions are not applicable to secured and unsecured creditors of the Company.

(c) The Articles of Association of IPCL also provide separately for debentures and debenture holders.

(d) The balance-sheet of IPCL as on 31.3.2006 also provides separate treatment to debentures. The debentures are not clubbed with other secured term loans and working capital loans.

(e) The debenture holders of IPCL and the secured creditors of IPCL have charges over different assets of IPCL as compared to the assets over which the secured creditors have charges. The non-convertible debentures are secured by way of first equitable mortgage on the land admeasuring 2.04 acres at village Angadh, Dist. Vadodara with all the superstructures and plant and machinery thereon. However, the term loans are secured on another parcel of land admeasuring one acre at village Angadh together with all the superstructure and plant and machinery and also the whole of the other fixed assets of Vadodara and Gandhar complexes of the Company except the stocks of raw materials, finished goods etc..

(f) The Chairman's report on the meeting of the secured creditors held on 14.4.2007 does not at all reflect the voting pattern between the debenture holders and the secured creditors of IPCL; does not even state as to how many debenture holders were present at the meeting.

(g) Absence of objection from the debenture holders or secured creditors of IPCL cannot justify the illegality and irregularity in not convening a separate meeting of the debenture holders.

(h) Reliance is also placed on the decisions in -

- (1970) 40 Company Cases 819, at page 877 (Gujarat), in re Maneckchowk and Ahmedabad Manufacturing Company Limited.
- 1995 Suppl (1) SCC 499, at pages 514-528, Hindustan Lever Employees' Union vs. Hindustan Lever Limited and others.
- (1994) 79 Company Cases 27, at pages 37 to 40, D.A. Swamy and others vs. India Meters Ltd.

11. On the other hand, Mr Soparkar for the Company has submitted that minority shareholders who are raising the above objection were neither debenture holders nor secured creditors of the IPCL- transferor company and, therefore, the appellants have no locus standi to raise such objection. Further, neither debenture holders nor other secured creditors had objected to being invited at the same meeting either at the meeting or in any court proceedings. Moreover, debenture holders of IPCL were secured creditors and, therefore, they were rightly called at the same meeting. Debenture holders belong to the same class as the other secured creditors like banks and financial institutions. Sub-classes of secured creditors may be relevant only if different treatment is given in the scheme. If the same treatment is given in the scheme to all secured creditors including debenture holders, there is no requirement of classifying debenture holders as a different class. In any case, since all the secured creditors, including all debenture holders present and voting at the meeting had unanimously approved the scheme of amalgamation and since the same treatment is given to all secured creditors including debenture holders, there was no need for classifying the debenture holders as a separate class. Strong reliance is placed on the observations made by this Court in Miheer Mafatlal Industries' case reported in (1996) 87 Comp. Cases 705 (Guj) at page 733 and in Re Arvind Mills Ltd. (2002) 111 Comp Cases 118 (Guj) and on the observations made by the Delhi High Court in Re Siel Ltd. (2004) 122 Comp Cases 536.

It is also submitted that merely because the entries in the balance-sheet had shown debenture holders as separate from other secured creditors, that cannot make debenture holders a separate class of stakeholders. Balance-sheet of Company is drawn up in the form given in Schedule VI to the Companies Act where

also the debenture holders are classified under secured creditors. Reliance is also placed on the observations made by the Apex Court in National Rayon Corporation Ltd. vs. Commissioner of Income-tax, AIR 1997 SC 3487 (para 12).

12. Discussion : Was a Separate Meeting required for Debenture holders.

12.1 Before dealing with the rival submissions, it would be necessary to refer to the principles laid down by the Apex Court, this Court and Bombay High Court. In National Rayon Corporation Ltd. vs. Commissioner of Income-tax, AIR 1997 SC 3487 the Apex Court held that debentures are nothing but secured loans. Similarly in Miheer Mafatlal Industries case decided by a Division Bench of this Court and reported in (1996) 87 Comp. Cases 705 (Guj.) at page 733, which decision came to be confirmed by the Apex Court in (1997) 1 SCC 579, this Court made the following observations :-

> "In our opinion, a plain reading of the section does not leave any doubt that only where separate terms are offered to separate classes of shareholders or creditors under the proposed compromise or arrangement, separate meetings are required to be held in respect of each class of creditors or shareholders for whom separate compromise or arrangement has been offered .. ... The classification of members or creditors will be founded on the basis of difference in terms offered under the Scheme. The difference in terms of the Scheme can be the only criterion for identifying the separate class for the purpose of convening a separate meeting for such class."

Similarly, this Court held in Re Arvind Mills Ltd. (2002) 111 Comp. Cases 118 that -

> "... The classification of members or creditors can be founded on the basis of difference in the terms offered under the scheme. The difference in terms of the scheme can be the only criterion for identifying separate class for the purpose of convening a separate meeting for such class."

The Delhi High Court has also followed the above principle in Re Spartek Ceramics India Ltd. reported in Manu/AP/0991/2005 (para 13) wherein it is observed as under :-

> "It is, therefore, obvious that unless a separate and different type of scheme of compromise is offered to a sub-class of a class of creditors or shareholders otherwise equally circumscribed by the class, no separate class of sub-class of the main class of members or creditors is required to be convened."

In State Bank of India vs. Alstom Power Boilers Ltd., (2003) 116 Comp. Cases 1, the Bombay High Court has held that it would depend upon the facts and circumstances of each case whether there would be any need for sub-classification amongst the secured creditors but the general principle would be the same, namely, whether the interests of the creditors who claim to belong to a different class are so dissimilar to the interests of the other creditors that it would be impossible for them to sit and consult together and take a common view of their common interest.

These observations were made by the Bombay High Court in a matter where some creditors claimed to belong to a different class and, therefore, wanted separate meetings to be convened.

12.2 In view of the above principles, we put a specific query to the learned counsel for the appellants whether the scheme offered different treatment to debenture holders as compared to the treatment offered to the other secured creditors and the answer was in the negative. Once it is clear that the same treatment is offered to the debenture holders and the other secured creditors, no useful purpose could have been served by convening one meeting for debenture holders and another meeting for the other secured creditors. The very fact that all the secured creditors who

were present and voted at the meeting unanimously approved the scheme of amalgamation is a further fact which supports the case of the respondent that there was no objection to the scheme of amalgamation from any debenture holder or from any other secured creditor. None of the secured creditors whether debenture holders or otherwise, have ever demanded convening of a separate meeting for debenture holders nor has any debenture holder or any other secured creditor made any grievance whatsoever against the same meeting having been convened for all secured creditors including the debenture holders. In the above factual background, both in terms of the identical treatment given to the debenture holders and the other secured creditors and also in absence of any opposition from a single debenture holder or any other secured creditor, we are of the view that the other arguments submitted on behalf of the appellants do not merit any serious consideration.

12.3 We may, however, deal with the argument based on statutory provisions. A perusal of the provisions of Sections 117A to 117C merely indicates that the said provisions are part of the special provisions relating to debentures contained in Sections 117 to 123 in Part IV of the Companies Act, 1956. Part IV contains provisions relating to Share Capital and Debentures. Part IV commences with Section 82 which indicates the nature of shares or debentures and particularly provides that shares or debentures shall be moveable property, transferable in the manner provided by the Articles of the company. As is well-known, the number of debenture holders is usually very large and most of them have comparatively small holdings and, therefore, for protection of the interest of a large number of debenture holders, the Companies Act provides for appointment of debenture trustees and debenture redemption reserves for the redemption of such debentures. The object of inserting Sections 117A to 117C (through Amendment Act, 53 of 2000 w.e.f. 13.12.2000) was, therefore, to provide such

additional safeguards for appointment of debenture trustees and their duties and provisions of redemption reserve. This additional safeguard in favour of a large number of debenture holders as against the limited number of secured creditors like public financial institutions and banks, does not place the debenture holders outside the class of secured creditors.

12.4 In view of the above discussion, we see no merit in the first contention.

Valuation for Share Exchange Ratio

13. Mr Shalin Mehta for the appellants vehemently submitted that the share exchange ratio / swap ratio of 1 : 5 (one share of Reliance Industries Ltd. in exchange of 5 shares of IPCL) is unfair, unjust and prejudicial to the whole class of equity shareholders of IPCL because -

(a) the share valuation report prepared by the firms of Chartered Accountants for arriving at the share exchange ratio was not supplied to the appellants, though specifically asked for and demanded at the meeting of the equity shareholders of IPCL on 14.4.2007.

(b) Even if the share valuation report was kept open for inspection on the day of the meeting of equity shareholders of IPCL, in a complex technical matters like valuation of shares, mere inspection of the report was not a sufficient opportunity. Laymen like minority equity shareholders of IPCL cannot be expected to comment on the spur of the moment.

(c) Nothing would have been lost by the Company if a copy of the share valuation report was given to the equity shareholders

who demanded a copy thereof at the meeting of the equity shareholders of IPCL held on 14.4.2007. Without supplying it to all in advance, supplying a copy of such report to persons who specifically demanded the same would have been more than sufficient.

(d) In Hindustan Lever Employees' case, (1995) 1 Supp. SCC 499, the Apex Court has referred to the following factors which have to be taken into account in determining the final share exchange ratio :

> "(1) The Stock Exchange prices of the shares of the two companies before the commencement of negotiations or the announcement of the bid.
> (2) The dividends presently paid on the shares of the two companies. It is often difficult to induce a shareholder, particularly an institution, to agree to a merger or a share-for-share bid if it involves a reduction in his dividend income.
> (3) The relative growth prospects of the two companies.
> (4) The cover (ratio of after-tax earnings to dividends paid during the year) for the present dividends of the two companies. The fact that the dividend of one company is better covered than that of the other is a factor which will have to be compensated for at least to some extent.
> (5) In the case of equity shares, the relative gearing of the shares of the two companies. The 'gearing' of an ordinary share is the ratio of borrowings to the equity capital.
> (6) The values of the net assets of the two companies. Where the transaction is a thorough-going merger, this may be more of a talking-point than a matter of substance, since what is relevant is the relative values

of the two undertakings as going concerns.

(7) The voting strength in the merged enterprise of the shareholders of the two companies.

(8) The past history of the prices of the shares of the two companies."

This view is again reiterated in Miheer Mafatlal's case (1997) 1 SCC 579 (620).

(e) A bare look at the share valuation certificate dated 9.3.2007 relied upon by the companies indicates that the aforesaid factors have been ignored altogether. The Chartered Accountants who had prepared the above share valuation certificate had not carried out any independent audit to establish the accuracy or sufficiency of the financial and any other information provided by the management of RIL and IPCL. This caveat sounded by the experts was enough for the Company Court to heighten the level of scrutiny in the facts of this case.

(f) The following factors were not taken into account by the experts while arriving at the share exchange ratio :-

(i) Fresh valuation of IPCL's assets has not been undertaken since disinvestment in the year 2002, but the assets of RIL were revalued on four occasions before the proposal of the present scheme of amalgamation. The IPCL shares were thus severely undervalued.

(ii) The cash reserve ratio of IPCL was more available than the cash reserve ratio of Reliance Industries Ltd.

(iii) The price earning ratio of RIL is 19 whereas it is six for

IPCL, meaning thereby, IPCL has more earning capacity.

(iv) Very recent amalgamation of six sick units into IPCL in the year 2006 has resulted into a reduction of IPCL's profit which aspect is not considered.

(g) RIL holds controlling shares in IPCL since 2002 and, therefore, a heavy burden lies on IPCL to show that there had been arms length dealing between IPCL and RIL before adopting the share exchange ratio.

(h) No facts and figures concerning the transferor company or the transferee company are referred to in the share valuation certificate. Without making any reference to the facts and figures concerning these two companies, the experts have recommended a share exchange ratio. There is no mathematics or statistics or econometrics referred to in the share valuation report. In absence of any financial details, it is not even possible for any objector to comment on the share valuation report.

(i) The share valuation certificate states that the market value of IPCL and that of RIL were computed by averaging the value and volume of shares traded for the last three months, which period is too short to decide fair market value of the respective companies. In Miheer Mafatlal's case, the Chartered Accountant had taken into account the market price of equity shares of past 24 months. Since sanction for the scheme of amalgamation was sought w.e.f. 1.4.2006, the market value of shares for the last 12 months prior to 1.4.2006 ought to have been considered. Valuation for only last three months i.e. from December 2006 to February 2007 was of no consequence as the whole market had known about the proposed scheme of amalgamation between the two Companies.

(j) The so-called share valuation report dated 9.3.2007 is merely a report recommending a share exchange ratio of 1 : 5 (one share of RIL in exchange of 5 shares of IPCL) without any justification.

(k) On account of non-disclosure of the share valuation report at the meeting of the equity shareholders of IPCL held on 14.4.2007 in spite of the demand made by the objectors, there was failure to make a true, full and fair disclosure as required under the proviso to Section 391(2) of the Companies Act, 1956. As held in Miheer Mafatlal' case, the scheme of amalgamation is bound to fail unless a true, proper and fair disclosure is made.

(l) The document dated 9.3.2007 produced with the OL Report merely refers to the three accounting methods without indicating what would be the valuation under each accounting method.

(m) The jurisdiction of the Company Court with regard to the share exchange ratio is supervisory and the Court can see whether the valuation was done after following the proper procedure and by giving proper weight to all the relevant factors and whether the valuation of shares broadly reflects the worth of the Company.

14. On the other hand, the learned counsel for the respondent has submitted that -

(i) there is no statutory requirement of carrying out valuation by independent valuers to arrive at share exchange ratio, under Sections 391-394 of the Companies Act. It is only for the guidance and assistance of the Board of Directors of Companies to propose a

share exchange ratio.

(ii) the Share Exchange Ratio has been calculated by the recognized valuers and once the same has been decided by the valuers the court may not go into the technicalities of the case and adjudicate the share exchange ratio as an Appellate Court. Reliance is placed on the decisoin in Hindustan Lever's case, (1995) 83 Comp. Cases 30 at page 37.

(iii) The equity shareholders of the petitioner Company have approved the scheme incorporating the share exchange ratio by an overwhelming majority. Reliance is placed on the decision of the Apex Court in Miheer H Mafatlal (supra) (para 40) and also on the decision in Reliance Petroleum Ltd. vs. Union of India, (2002) All Gujarat GLHEL, para 23.

(iv) Valuation Report was kept open for inspection for all shareholders before the meeting. Notice convening the meeting of shareholders clearly stated that the report of the valuers was available for inspection at least for 21 days (page 292 of the Company Petition 93 of 2007). In spite of this, none of the Objectors availed of the opportunity to inspect the same or objected to such inspection, asking for a copy of the report. Asking for valuation report at this stage is nothing but a tactic to delay the proceedings.

(v) There is no statutory requirement of circulation of valuation report to shareholders nor is there any statutory requirement of filing a valuation report with the Court. In any case, the valuation report is part of the record of proceedings, inasmuch as it is annexed with the Official Liquidator's report submitted to this Court.

(vi) The allegation that the valuation report was not submitted even to the Court is also baseless and factually incorrect, inasmuch as the Official Liquidator has annexed the said valuation report along with his report filed in the present proceedings. In any event, the Regional Director and the Official Liquidator, being statutory authorities, had examined the valuation report and submitted their no objection to this Court.

(vii) For arriving at the share exchange ratio, the valuers have adopted the well known methods of (i) net assets value, (ii) earnings value method and (iii) market value method. These methods have been approved by the Supreme Court in the cases of Hindustan Lever Ltd. and Mafatlal Industries Ltd.

(viii) The allegation that six polyester companies are amalgamated with IPCL in 2006 for reducing profitability of IPCL is both, factually and legally, incorrect. As a matter of fact, post amalgamation turnover and profit of IPCL have gone up. The said amalgamation is concluded and cannot be indirectly challenged in this proceeding.

Discussion : Share Exchange Ratio

15 Before dealing with the rival contentions, we may refer to the following principles laid down by the Apex Court in Hindustan Lever Employees Union vs. Hindustan Lever Ltd. & Ors., (1995) 83 Comp. Cases 30 (57) :-

> “A similar question came up for consideration before a Division Bench of the Gujarat High Court in the case of Jitendra R. Sukhadia vs. Alembic Chemical Works Co. Ltd., (1987) 3 Comp LJ 141 : (1988) 64 Comp Cases 206. This was also a case of amalgamation. In the case, it was held that the exchange ratio of the shares of the two companies, which

were being amalgamated, had to be stated along with the notice of the meeting. How this exchange ratio was worked out, however, was not required to be stated in the statement contemplated under Section 391(a).”

In the same judgment at page 37, the Apex Court held as under:-

“... the jurisdiction of the court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. A company court does not exercise an appellate jurisdiction. It exercises a jurisdiction founded on fairness. It is not required to interfere only because the figure arrived at by the valuer was not as good as it would have been if another method had been adopted. What is imperative is that such determination should not have been contrary to law and that it was not unfair for the shareholders of the company which was being merged. The court's obligation is to be satisfied that valuation was in accordance with law and it was carried out by an independent body.”

Again in Miheer H Mafatlal vs. Mafatlal Industries Ltd. (1997) 1 SCC 579 (at 617), the Apex Court reiterated the above principles in the following terms :-

“... It has also to be kept in view; that which exchange ratio is better is in the realm of commercial decision of well informed equity shareholders. It is not for the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of world and reasonable persons who know their own benefit and interest underlying any proposed scheme. With open eyes they have okayed this ratio and the entire scheme. ... “

16. In light of the above principles enunciated by the Apex Court, it appears that the notice under Section 391(a) did not require the transferor company to state how the exchange ratio was worked out. However, since in the ultimate analysis the shareholder would be concerned with the value of shares in the transferor company and the movement of such value before and after amalgamation, we called upon the learned counsel for the

respondent to place on record the quoted market value of the shares of the transferor company and the transferee company. The following figures which have come on record certainly bear out the share exchange ratio of 1 RIL share for 5 IPCL shares:-

Date	RIL	IPCL	Ratio
Wed. 31.01.07	1,364.60	277.85	4.91
Wed. 28.02.07	1,354.60	259.25	5.23
Fri. 30.03.07	1,368.35	271.10	5.05
Mon. 30.04.07	1,560.10	310.85	5.02
Thu. 31.05.07	1,760.20	353.20	4.98
Fri. 29.06.07	1,700.30	343.05	4.98
Tue. 31.07.07	1,892.30	373.95	5.06
Fri. 31.08.07	1,959.50	387.05	5.06
Fri. 28.09.07	2,296.20	458.00	5.01
Thu. 04.10.07	2,422.55	483.10	5.01

We also put a specific query to the learned counsel for the appellants – in view of the escalation in the quoted market value of the shares of the transferee company at the time of hearing this appeal (shares of Reliance Industries Ltd. having gone up above Rs.2800/-), wasn't the share exchange ratio of 1 : 5 (one share of RIL for five shares of IPCL) more beneficial to the shareholders of IPCL. The learned counsel for the appellants, however, submitted that such subsequent developments were not relevant. We are unable to accept this submission.

17. It will also not be out of place to mention at this stage that while considering a similar question, the Apex Court observed in Miheer Mafatlal's case (1997) 1 SCC 579 that while the objection against the share exchange ratio was being lodged by a shareholder holding a microscopic minority in the transferor company, the substantial share holding in the transferor company as well as in the transferee company was with financial institutions

and banks and if the share exchange ratio as contained in the proposed scheme of amalgamation was prejudicial, such financial institutions/banks would have certainly objected to the same.

In the facts of the present case also, we find that the holding of the Financial Institutions/Mutual Funds/ Insurance Companies and Foreign Institutional Investors in IPCL was between 28% and 30% as against 0.007% holding of the appellants in IPCL – transferor company. Admittedly, none of the financial institutions, mutual funds, insurance companies or foreign institutional investors objected to the share exchange ratio.

The exact details of the present case, the equity shareholding of financial institutions etc. in IPCL (transferor company) was as under:-

Sr. No. (a)	**Category (b)**	**March 31, 2006 (%) (c)**	**March 31, 2007 (%) (d)**	**October 12, 2007 (%) (e)**
1	Financial Institutions/Mutual Funds/ Insurance Companies	16.31	17.99	18.54
2	Foreign Institutional Investors	13.91	10.11	10.90
3	Central/ State Government	0.42	0.35	0.35
4	Bodies Corporate	3.75	8.45	8.12
		34.00	36.00	37.00

18. It is true that if one were to decide the matter only by referring to the contents of the share valuation certificate dated 9.3.2007, it may not be possible for a layman to form an opinion or to comment upon the wisdom in fixing the share ratio of 1 : 5 because the share valuation report dated 9.3.2007 refers to various accounting methods and the factors taken into account by the Chartered Accountants without indicating what would have been

the share exchange ratio by following one particular method nor does the report give the details about the valuation of the assets, turn-over, net profits etc. of the two companies. However, in view of the decision of the Apex Court in Hindustan Lever Employees Union (supra) from which the relevant observations are quoted in para 15 hereinabove and more particularly in view of the undisputed fact that after amalgamation, the price of the shares in the transferee company (RIL) has substantially gone up and thereupon the shareholders in IPCL have substantially gained, we would not be justified in investing any further time on the share exchange ratio which was accepted by 99.89% of the equity shareholders of IPCL at the meeting of the equity share holders convened on 14.4.2007 pursuant to the directions of the Company Court; the appellants held only 0.007% shares in IPCL.

Blank Proxy Forms

19. The learned counsel for the appellants has also vehemently submitted that serious irregularities were committed by the transferor company in obtaining proxies from certain employees who were equity shareholders and who were threatened or coerced into signing blank proxy forms by the Heads of Departments of IPCL (transferor company) prior to the day of the equity shareholders meeting. Even complaints were made by the registered trade unions of IPCL before the Chairman on 10 and 14th April 2007 and even to SEBI on 17th April 2007. Such action was -

(a) Violative of Section 166 of the Companies Act.
(b) Violative of Articles of Association of IPCL where the manner and method of giving proxy is laid down.
(c) violative of the order dated 23.3.2007 of the Company court by which the Company Court had ordered that voting by proxy was permitted.

20. On the other hand, it is submitted by the learned counsel for the respondent that -

(i) It is a false, baseless and bald allegation that any coercive method or force was applied for signing Proxy forms.

(ii) Not a single person has addressed any letter to the Chairman of the Court convened meetings or the Company for withdrawal of his proxy.

(iii) Even otherwise, during the meeting, the Chairman had assured that even if any of the employee shareholders had given a proxy form earlier, but if they were present at the meeting, then they would be entitled to participate in the voting and the proxy forms given earlier would be held invalid, while their votes would be considered. Chairman had also instructed scrutineers accordingly. This is also stated in the Chairman's Report submitted to this Court. Thus, there is no violation of the provisions of the Companies Act as also of the order of the Court dated 16.03.2007 in Company Application No.126 of 2007 as alleged.

(iv) Signing of blank proxy form is not an illegality as has been held by the Hon'ble Delhi High Court in the matter of Swadeshi Polytex Ltd. reported in 1988(63) Com. Cases 709 (pages 716 to 718).

21. We find that the Chairman of the meeting (who is a retired Judge of this Court) in his report dated 18.4.2007 stated as under :-

"8 (a) At the time of polling, certain employee-equity shareholders of the Applicant Company came to me while I was on the dais and state that some of the votes being cast at the meeting were on behalf of corporate entities and demanded to see the authorizations of the persons who were voting on behalf of such corporate entities. I assured them that all the authorizations would be duly verified by the Scrutineers and that if any authorization was found to be invalid or defective by the Scrutineers, the vote of such person would be treated as invalid. I also instructed the Scrutineers to proceed accordingly.

(b) The said employee-shareholders further stated that the employee Union of the Applicant Company had submitted a statement of objections to the Scheme at the Applicant Company's registered office, marked for my attention, more than 48 hours before the meeting. I assured them that I had received the same and had handed over the same to the Applicant Company under a letter for necessary action.

(c) The said employee-equity shareholders then contended that certain employee-shareholders who had opted for the Voluntary Separation Scheme offered by the Applicant Company had not been allowed entry to the meeting venue and were unable to vote. I enquired with the Applicant Company's officials present who denied that any valid shareholder had been refused entry. I instantaneously directed the Company officials that any shareholder who may be outside the meeting venue and wished to vote on the resolution proposed at the meeting must be permitted to do so. However, no specific complaint from any shareholders was received.

(d) Another employee-equity shareholder also stated that while some of them had given proxies to the Company to attend and vote on their behalf, they would like to vote personally on the Scheme. I assured them that if any of the shareholders present at the meeting wished to vote either in favour of or against the Scheme they were free to do so, and any proxy given by them earlier, as said, would thereupon stand invalidated. I also instructed the Scrutineers to act accordingly.

9. I then directed the Members present to complete the casting of their votes in the ballot boxes which was duly done."

It is thus clear that the Chairman had assured the equity shareholders at their meeting held on 14.4.2007 that even if any of the shareholders had given his proxy form earlier, but if they were present at the meeting then they would be entitled to participate in the voting and the proxy forms given earlier would be held invalid and that their votes would be considered. The Chairman had also instructed the scrutinisers accordingly.

In view of the above report and particularly in view of the fact that more than 99% of the equity shareholders of the transferor company granted approval to the scheme and that the appellants making this grievance, have not led any specific evidence on this disputed question of fact, we are not in a position to give any finding in favour of the appellants or against the transferor company.

Monopoly Status

22. The learned counsel for the appellants also vehemently submitted that the scheme of amalgamation would confer monopoly status on Reliance Industries Ltd. and also result into concentration of economic powers in the hands of a few individuals and, therefore, it is opposed to the Directive Principles of State Policy as contained in clauses (b) and (c) of Article 39 of the Constitution. It is submitted that such principles are fundamental in the governance of the country and, therefore, the relevant provisions of Sections 391 and 394 are required to be read and interpreted in light of the said Directive Principles of State Policy. It is also submitted that the Court is, therefore, required to examine the scheme of amalgamation on the touchstone of public interest and public policy and acquisition of monopoly status or controlling market share in the industry would be contrary to public interest and public policy. Reliance is also placed on the following observations in in Hindustan Lever Employees' case, 1995 (1) Suppl. SCC 499 :-

> "..What requires, however, a thoughtful consideration is whether the company Court has applied its mind to the public interest involved in the merger. In this regard the Indian law is a departure from the English law and it enjoins a duty on the Court to examine objectively and carefully if the merger was not violative of public interest. No such provision exists in the English law. What would be public interest cannot be put in a straight jacket. It is a dynamic concept which keeps on changing. It has been explained in Black's Law Dictionary as, 'something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity whereas the interest of the particular locality which may be affected by the letters in question. Interest shared by citizens generally in affairs of local, State or national Government.' It is an expression of wide amplitude. It may have different connotation and understanding when used in service law and yet a different

> meaning in criminal law than civil law and its shade may be entirely different in Company Law. Its perspective may change when merger is of two Indian companies. But when it is with subsidiary of foreign company the consideration may be entirely different. It is not the interest of shareholders or the employees only but the interest of society which may have to be examined. And a scheme valid and good may yet be bad if it is against public interest.
>
> 6. Section 394 casts an obligation on the Court to be satisfied that the scheme for amalgamation of merger was not contrary to public interest. The basic principle of such satisfaction is none other than the broad and general principles inherent in any compromise or settlement entered between parties that it should not be unfair or contrary to public policy or unconscionable. In amalgamation of companies, the Courts have evolved, the principle of, 'prudent business management test' or that the scheme should not be a device to evade law. But when the Court is concerned with a scheme for merger with a subsidiary of a foreign company then the test is not only whether the scheme shall result in maximising profits of the shareholders or whether the interest of employees was protected but it has to ensure that merger shall not result in impeding promotion of industry or shall obstruct growth of national economy. Liberalised economic policy is to achieve this goal. The merger, therefore, should not be contrary to this objective."

The Registrar of Companies or the Official Liquidator have not even referred to the above important issue unlike the concern shown by the Government of United States of America in such matters. If a merger or acquisition is found to result in creation of market power or market share exceeding 50%, the merger or acquisition is not allowed. Such concern cannot be said to be alien to amalgamations and mergers taking place in India.

23. On the other hand, it is submitted by the learned counsel for the respondent that -

(i) There is no question of any monopoly status being created pursuant to amalgamation. The Objectors have failed to show as to how by merging IPCL with RIL, monopoly status would be created

for RIL.

(ii) IPCL was already an associate company of RIL post disinvestment of IPCL's shares by the Union Government in favour of RIL. This relationship has been disclosed in the annual reports of RIL and IPCL.

(iii) The US Guidelines of Department of Justice, as relied upon by the Objectors' advocate are NOT relevant in the present amalgamation proceedings. There is no statutory requirement restricting amalgamation of associate company with the parent company under anti-trust laws in India.

(iv) It is, therefore, submitted that there is no question of any monopoly status being created in favour of RIL, as alleged by the Objectors. The Regional Director and the Official Liquidator, being statutory authorities, after examining this scheme and all relevant correspondence and documents called for by them from the petitioner Company, were fully satisfied with the scheme and certified to the Court that the scheme was not against the public policy and that the affairs of the petitioner Company have not been conducted in a manner prejudicial to interest of the members or to public interest. In addition, both Bombay Stock Exchange Limited and National Stock Exchange of India Limited had also approved the scheme under clause 24(f) of the Listing Agreement.

Discussion : Monopoly Status

24. We have given our anxious consideration to the submissions made by the learned counsel for the appellants on the above issue. Our attention was, however not invited to any existing legislation in force which would come in the way of considering the scheme for amalgamation of IPCL with RIL merely because

combined assets and turn-over of the two companies would be very substantial. We also find that the Competition Act, 2002 (Act No.12 of 2003) is recently amended by the Competition (Amendment) Act, 2007 and Section 6 of the amended Act provides Regulation of Combinations in the following terms :-

> "6.(1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void."

Sub-section (2) of Section 6 lays down the detailed procedure to be followed for obtaining approval of the Competition Commission for such amalgamation.

However, we find that the provisions of Section 6 of Competition Act, 2002, as amended by the Amendment Act of 2007 have not as yet come into force and that they had certainly not come into force when the Company Court sanctioned the scheme by judgment and order dated 16.8.2007.

We may also refer to the following observations made by the Apex Court in Hindustan Lever Employees' Union case (1995 Supp. (1) SCC 499 at page 528 para 84) :-

> "An argument was also made that as a result of the amalgamation, a large share of the market will be captured by HLL. But there is nothing unlawful or illegal about this. The court will decline to sanction a scheme or merger, if any tax fraud or any other illegality is involved. But that is not th case here. A company may, on its own, grow to capture a large share of the market. But unless it is shown that there is some illegality or fraud involved in the scheme, the court cannot decline to sanction a scheme of amalgamation."

In view of the above, no further discussion is necessary on this issue.

Public Interest/ Public Policy

25. Mr Mehta for the appellants has also challenged the scheme of amalgamation on the ground that the hidden object of the scheme is to strip IPCL of its assets for diverting funds for special economic zones. RIL wants to wipe out the reserves of IPCL worth more than Rs.4500 crores. IPCL was a Navratna. Under the scheme of amalgamation under challenge, RIL will come to acquire a strategic sector industry without any reciprocating social responsibility. Reliance is placed on the observations in Miheer Mafatlal's case that “for ascertaining the real purpose underlying the scheme with a view to satisfy on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same”. It is vehemently submitted by Mr Mehta that as observed by the Apex Court in Hindustan Lever Employees' case ,” it is not the interest of the shareholders or the employees only but the interest of the society which may have to be examined. And a scheme valid and good may yet be bad if it is against public interest”.

The learned counsel for the appellants, further submitted that the burden of proof that the proposed scheme of amalgamation is in public interest and is not opposed to public interest and public policy lies on the Company which comes before the Company Court for sanction of the scheme of amalgamation and that this burden cannot be shifted upon the objectors.

26. On the other hand, it is submitted by the learned counsel for the respondent that -

(i) In terms of the scheme, all the assets as well as liabilities of the Transferor Company (IPCL) would be transferred to the Transferee Company (RIL). Any particular item of assets / liabilities

cannot be looked at separately. The question of IPCL Reserves getting misused or wiped out is baseless and without any substance. The allegation that the Transferee Company wants to misutilize the assets of the Transferor Company is also baseless and without any substance. The whole of the undertakings of the Transferor Company would be amalgamated with the Transferee Company for the reasons set out in the scheme as also in the Explanatory Statement to the scheme.

(ii) The objection indirectly challenges the Government decision of disinvestment. Such type of frivolous objection cannot be dealt with in the present amalgamation proceedings and should not be considered at all by the Court while sanctioning the scheme.

(iii) VRS is a distinct and separate scheme altogether and voluntary at the option of the employees. It has nothing to do with the present scheme. It has already been implemented prior to the present scheme.

(iv) The scheme complies with all the procedural formalities. All the desired disclosures have been made in the scheme. The rationale/benefits of the scheme have been dealt with in the scheme itself. There is no substance in the Objector's allegation to pierce the veil. Further, the petitioner Company has already presented the scheme with requisite details. Making the petitioner Company to further demonstrate that the scheme is beneficial to the community at large is uncalled for, unwarranted and not a requirement under law. The law, as settled by the Hon'ble Supreme Court is that the scheme should not be opposed to public policy or against public interest. The burden is on the Objectors to show that the scheme is opposed to public policy or public interest. They have miserably failed to do so. Reliance is placed on the decision in Balco Employees Union (Regd.) vs. Union of India

(2002) 108 Comp. Cases 193 (SC), page 236.

26. Having carefully considered the rival submissions, we are unable to find any substance in the objections raised on behalf of the appellants. The tenor of the objection against the scheme on the ground of public interest and public policy is more against disinvestment of the Government holding in IPCL which event took place in the year 2002 and cannot now be permitted to be challenged in the year 2007 and that too in the proceedings for sanction of the scheme of amalgamation. In Balco Employees Union (regd.) vs. Union of India (2002) 108 Comp. Cases 193 (236), the Apex Court made the following pertinent observations :-

> "Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. It is not for the court to consider relative merits of different economic policies and consider whether a wiser or a better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the Courts. In the matter of policy decision of economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be reluctant to impugn the judgments of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

28. The allegations to the effect that IPCL reserves will be misused or wiped out and that the transferee company will misutilize the assets of the transferor company are allegations made without any basis. When such serious allegations are made, the objector must indicate some basis in support of the allegations. When such allegations were made for objecting the scheme of arrangement amongst HCL Infosystems Ltd., HCL Infinet Ltd. and HCL Technologies Ltd. the Delhi High Court overruled the objections in the judgment reported in (2004) Comp. Cases 861 (Delhi) and made the following observations :-

> "... Since in the present case the overwhelming majority of the shareholders has approved the scheme, the same cannot override the opinion of the intervener. The allegation of the objector that there is an effort to siphoning of the profitable business of the company in which case the minority shareholders would be deprived of the benefit is also considered by me giving due weightage thereto. No basis is provide in support of the aforesaid allegation ... Therefore, the aforesaid contention is also without any merit."

The Apex Court has also held that what could happen in distant future or any such possibilities cannot be the ground for refusing sanction to the scheme of amalgamation. In Hindustan Lever Employees' Union vs. Hindustan Lever Ltd., (1995) 83 Comp. Cases 30 = 1995 Suppl.. (1) SCC 499 the Apex Court observed as under : -

> "A scheme of amalgamation cannot be faulted on apprehension and speculation as to what might possibly happen in future. The present is certain and taken care of .. No one can envisage what will happen in the long run. But on this hypothetical question, the scheme cannot be rejected."

Invoking Doctrine of Lifting the Veil

29. The learned counsel for the appellants has also vehemently submitted that the Apex Court has also held in Miheer Mafatlal's case that for ascertaining the real purpose underlying the scheme, the Court can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same. It is submitted that since the details of working out the share exchange ratio were not supplied to the objectors, though specifically demanded, and that the amalgamation would result in creation of monopoly power with Reliance Industries Ltd., which already had controlling shares in IPCL since the year 2002, the Company Court ought to lift the corporate veil. It is also submitted that while on the one hand all the permanent employees of the

transferor company -IPCL became employees of the transferee company (RIL), clause 8.1 of the scheme debars the employees of IPCL from getting the benefits applicable and available to the employees of RIL.

30. As regards the grievance made by the appellants, who were having a microscopic minority of share holding in IPCL (the transferor company) about the rights and interest of the employees of IPCL, that controversy is the subject matter of a separate appeal being OJ Appeal No.240 of 2007 and the said appeal is being decided by a separate judgment. Hence, we do not propose to deal with the grievance made by the minority shareholders regarding the treatment given to the employees of IPCL.

The arguments for the purpose of invoking the doctrine of lifting the corporate veil are more in the nature of summary of the previous arguments which are already considered and rejected by us in the paragraphs 15 to 28 and, therefore, it is not necessary to deal with the same all over again.

In Miheer Mafatlal' case as well as in Hindustan Lever Employees' case, the Apex Court has indicated that while the scheme of amalgamation cannot be sanctioned if such scheme is contrary to public policy or contrary to public interest, it is for the objectors to discharge the initial onus showing how proposed scheme is contrary to the public interest or public policy.

31. As already discussed earlier, the appellants have not been able to show anything in support of the contention that the scheme of amalgamation, as sanctioned by the learned Company Judge, is contrary to the public interest or contrary to public policy. The general rule of the law of evidence that the burden of proving the fact is on the person asserting it will certainly apply and,

therefore, the objector to the scheme must place some material before the Court or must indicate some ground for calling upon the Court to hold a detailed inquiry into serious allegations made bonafide and with a sense of responsibility. It is only in cases like environmental pollution cases that the Courts have thrown the burden on the industry to show that the industry is environmentally benign. Even in those cases, the petitioner or the complainant before the Court must place at least some facts to show that the matter needs some hearing before the Court and judicial scrutiny. In the instant case, the appellants' case is bereft of any details or particulars which require the Court to undertake any inquiry or scrutiny on the touchstone of public interest and public policy.

Concluding Discussion

32. In Mihir Mafatlal (1997) 1 SCC 579 (601), the Apex Court laid down the following parameters for the Company Court in the matters of sanctioning scheme of amalgamation :-

> “In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged:
>
> 1. The sanctioning Court has to see to it that all the requite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391 (1)(a) have been held.
>
> 2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391, sub-section(2).
>
> 3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

4. That all necessary material indicated by Section 393 (1) (a) is placed before the voters at the concerned meetings as contemplated by Section 391,sub-section (1).

5. That all the requisite material contemplated by the proviso to sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirement of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction.”

33. We find that all the statutory requirements were complied with. The meetings of equity shareholders, secured creditors and unsecured creditors were convened. Approval to the scheme was granted by the requisite statutory majority - in fact by an overwhelming majority of equity shareholders to the extent of 99.89% and unanimously by the secured creditors including Debenture holders and also by unsecured creditors. The Official Liquidator and the Regional Director of Company Affairs under the Ministry of Law, Justice and Company Affairs have also submitted their reports indicating that the scheme is not against the public policy and that sanctioning the scheme would not prejudice the interest of the members and the public at large. In view of the above and the foregoing discussion, we see no merit in this appeal filed by seventeen shareholders who were having 19,970 shares in IPCL (transferor company) which constituted 0.007% of shareholding in IPCL.

34. The appeal is dismissed.

(M.S. SHAH, J.)

(K.A PUJ, J.)

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